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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/594,883	09/26/2007	Joachim Lohr	L7725.06128	5629
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James Edward Ledbetter 1875 Eye Street Suite 1200 Washington, DC 20006				
EXAMINER				
AHMED, ENAM				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/594,883

Applicant(s)

LOHR ET AL.

Examiner

ENAM AHMED

Art Unit

2112

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 5) ☒ Claim(s) 30 and 32-52 is/are pending in the application.
- 5a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 6) ☐ Claim(s) ____ is/are allowed.
- 7) ☒ Claim(s) 30, 32, 33, 35-37 and 50-52 is/are rejected.
- 8) ☒ Claim(s) 34 and 38-49 is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)
Paper No(s)/Mail Date ____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

Final

This office action is in response to applicant's amendment filed 6/30/11.

Response to applicant's arguments

1. Applicant's arguments with respect to claims 30, 51 and 52 have been fully considered, however are not found persuasive.

Response to applicant's remarks

With respect to claim 30 on pg. 10, the applicant argues first it is noted that the passages in paragraphs [0112] to [0115], referred to by the Office Action, relate to a "sub" – embodiment directed towards a TDM (Time Division Multiplex) system (see paragraph [0111]), while the remaining portions of Lee cited to in the rejection of claim 30 (e.g., paragraphs [0122], [0124] and [0131] relate to another embodiment directed to a CDM system (see, e.g., paragraph [0119] of Lee). Hence, only the teaching with respect to the CDM system embodiment, disclosed in paragraph [0119] et. seq., teaches the use of two reverse supplemental channels for initial transmission and retransmission respectively. Therefore, the Office Action inappropriately relied on two separate and distinct embodiments which are incompatible to allege anticipation of claim 30.

The Examiner wants to respectfully point out, the applicant agrees that there are two different reverse supplemental channels in the CDM system, beginning at paragraph [0119], and the Examiner has used the CDM system for all of the limitations of claim 30, except for the last limitation, which states "wherein a retransmission time interval of the first data channel is smaller than a transmission time interval of the second data channel", however the CDM system does clearly teach "wherein a retransmission time interval of the first data channel is smaller than a transmission time interval of the second data channel" in paragraphs [0134 – 0136], because paragraphs [0134] and [0135], actually have the different data rates that may be used for the initial transmission, also known as the newly transmitted data over the reverse supplemental channel 1, and retransmission data, over the reverse supplemental channel 2.

With respect to claim 30 on pg. 11, the applicant argues secondly, the teaching of Lee in paragraphs [0112]-[0115] and [0136] do not teach that the transmission time interval on a "first channel" (which the Office Action alleges corresponds to the reverse supplemental channel 1 in Lee) provides an initial transmission which "is smaller than" a transmission time interval of a "second channel" (which the Office action alleges corresponds to the reverse supplemental channel 2 in Lee) that is used for a retransmission, as recited by claim 30.

The Examiner wants to respectfully point out, paragraphs [0134 – 0136], does teach "wherein a retransmission time interval of the first data channel is smaller than a transmission time interval of the second data channel", as discussed above paragraphs

Art Unit: 2112

[0134] and [0135], actually have the different data rates that may be used for the initial transmission, also known as the newly transmitted data over the reverse supplemental channel 1, and retransmission data, over the reverse supplemental channel 2. Further, paragraph [0136], gives an example, where it is said that the newly transmitted data is at a rate of 38.4 kbps, and if an error occurs in the packet transmitted, then a NAK for the corresponding packet is transmitted to the transmission end from the receiving end, and it further goes on to say an allowable data rate is 153.6 kbps, however 9.6 kbps is allocated to the code symbols for the data to be transmitted on retransmission, thus it is clear that the transmission time interval is variable and can be changed in order to meet the requirements.

With respect to claim 30 on pg. 11, the applicant argues it is further noted that the use of more or less transmission power for retransmission alone does not imply that a retransmission is performed faster or that the retransmission time interval (e.g., the slot size) is changed in comparison to the channel providing the initial transmission.

The Examiner disagrees with the statement, and points out initially, there is no mention of a slot size being changed in the claims, and secondly though speed of transmission is discussed throughout the Lee reference, in paragraph [0136], it specifically states transmitting at a speed of 38.4 kbps on initial transmission may have errors, and thus a different speed in the form of kbps is used in order to reduce the likeliness of more errors. Thus, it is clear from this paragraph alone, that a speed of

Art Unit: 2112

transmission, in this case, kbps, is changed from initial transmission to retransmission in order to reduce errors and have effective retransmission.

35 U.S.C. 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 30, 32, 33, 35, 36, 37, 50, 51 and 52 are rejected under 35 U.S.C. 102(e) as being unpatentable over Lee et al. (U.S. Pub. No. 2005/0058154).

With respect to claims 30, 51 and 52 the Lee et al. reference teaches transmitting a data packet from the mobile terminal to the base station via a first data channel ([0122] – The reverse supplemental channel 1 is the first channel), receiving a feedback message from the base station at the mobile terminal, wherein the feedback message indicates whether the data packet has been successfully received by the base station ([0124] – A nack is received from the receiving end to the transmitting end), and in case the feedback message indicates that the data packet has not been received successfully, transmitting the retransmission data packet from the mobile terminal to the base station via a

second data channel ([0122] and [0131] – data packet is retransmitted through a reverse supplemental channel 2, based on the nack), wherein a transmission time interval of the first data channel is smaller than a transmission time interval of the second data channel ([0134 – 0136]– different data rates that may be used for the initial transmission, also known as the newly transmitted data over the reverse supplemental channel 1, and retransmission data, over the reverse supplemental channel 2).

With respect to claim 32, the Lee et al. reference teaches determining the transmission power for a retransmission of the data packet, in case the feedback message indicates that the data packet has not been received successfully ([0134] – the retransmission power can be adjusted), and wherein the retransmission data packet is transmitted at a transmission power lower than the transmission power of the transmitted data packet ([0136] – allowable data rate is 153.6 kbps, however 9.6 kbps is allocated to the code symbols for the data to be transmitted on retransmission).

With respect to claim 33, the Lee et al. reference teaches subsequently reducing the transmission power for subsequent retransmission data packets that are sent for the unsuccessfully received data packet ([0132 – 0134] – subsequent reduction of transmission power can be implemented or adjusted as well).

With respect to claim 35, the Lee et al. reference teaches selecting in the mobile terminal the transmission power for the transmission of the retransmission data packet based on or considering at least one of a measured channel quality, power control commands received from the base station, and an additional diversity and processing gain obtained by using a longer transmission time interval on the second data channel ([0132 – 0133]).

With respect to claim 36, the Lee et al. reference teaches wherein the retransmission data packet and the transmitted data packet comprise the same payload ([0129]).

With respect to claim 37, the Lee et al. reference teaches wherein the retransmission data packet is transmitted by the mobile terminal after a predetermined time span upon having received said feedback message ([0136]).

With respect to claim 50, the Lee et al. reference teaches wherein the data packet and the retransmission data packet are transmitted via dedicated transport channels ([0249]).

Allowability

Art Unit: 2112

3. Claims 34 and 38-49 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

1. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Enam Ahmed whose telephone number is 571-270-1729. The examiner can normally be reached on Mon-Fri from 8:30 A.M. to 5:30 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Scott Baderman, can be reached on 571-272-3644.

Art Unit: 2112

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EA

9/9/11

/Scott T Baderman/

Supervisory Patent Examiner, Art Unit 2114